

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

Confirmation date: October 21, 2019
Time: 2:00 PM

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IN RE:

CASE NO.: 19-20167-PRW

Carlos T. Martinez a/k/a Carlos Martinez and
Ruby Martinez dba Fashion Flair-New & Consignment,

CHAPTER 13

Debtors.

Judge: Paul R. Warren

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**OBJECTION TO CONFIRMATION OF
THE DEBTORS' PROPOSED AMENDED CHAPTER 13 PLAN**

NOW COMES, Wells Fargo Bank, N.A., (hereinafter referred to as "WFHM"), by and through its attorneys, Frenkel, Lambert, Weiss, Weisman & Gordon, LLP, and in support of its objection to confirmation of the Debtors' proposed amended Chapter 13 plan, states as follows:

1. On or about February 28, 2019, the Debtors herein filed a petition under Chapter 13 of the Bankruptcy Code and pursuant thereto an automatic stay was imposed.

2. WFHM is a secured creditor of the Debtors pursuant to a note and mortgage executed by the Debtors on April 19, 1996 to secure payment of the principal sum of \$18,250.00 on property located at 27 McNair Drive, Rochester, New York 14624. The executed Note contained a twenty year repayment term with a loan maturity date of April 24, 2016.

3. This is the Debtors' third bankruptcy filing since 2012. In 2012, a Proof of Claim was filed in case 12-21737 indicating a \$6,314.74 total debt owed and \$6,078.86 principal balance. In 2016 bankruptcy case #16-21329 was filed and an amended Proof of Claim was filed on December 5, 2017 wherein the total debt to be paid through the plan was \$26,455.70, which included post petition escrow advances as of September 1, 2017. In the current case, a total debt Proof of Claim was filed on behalf of WFHM on October 18, 2019 as claim #16-1 in the amount of \$37,282.22. As indicated in the preceding paragraph, the Debtors' mortgage loan had a contractual maturity date of

April 24, 2016, and as such, already matured. The balance due in full on the loan includes additional escrow advances and taxes advanced as corporate advances when Debtors' loan was in their prior bankruptcy case. The Proof of Claim also takes into account the Trustee payments made during the prior bankruptcy case.

4. The total debt owed to WFHM as of the petition date is \$37,282.22, with a contractual interest rate of 9.5%. This includes a principal balance of \$2,720.82, accrued interest at \$1,123.62, escrow advances of \$20,897.35 and non-escrow advances of \$12,678.40. The mortgage debt represents a lien on the Debtors' residence. However, even if the Till interest rate were utilized the risk factor to be applied should be upon information and belief the maximum allowed as this is Debtors' third bankruptcy filing and Debtors' show a history of failing to maintain their property tax obligations.

5. The Debtors' proposed amended plan does not provide for the total debt owed to WFHM. Thus, Debtors' plan is insufficient to pay the total debt owed to WFHM and objection to confirmation is hereby made.

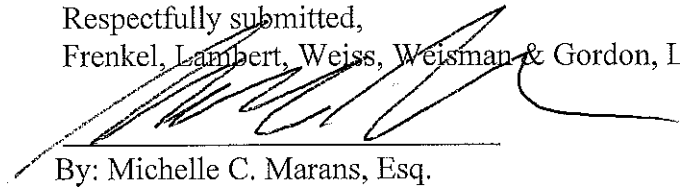
6. If this loan is to be paid in full through the chapter 13 plan, the Debtors' plan also fails to provide that the Debtors will maintain all required tax and insurance payments as required by the note and mortgage. As is the practice in this district, taxes and insurance will not be paid by the Chapter 13 Trustee and as such, the Debtors must provide for these additional payments.

7. WFHM will withdraw its objection provided the Debtors file an Amended Chapter 13 plan sufficient to pay WFHM's total debt and that provides for the payment of taxes and insurance directly by the Debtors.

WHEREFORE, WFHM, respectfully requests that confirmation of the Debtors' amended plan be denied and for other and further relief as is just and proper.

Dated: Williamsville, New York
October 18, 2019

Respectfully submitted,
Frenkel, Lambert, Weiss, Weisman & Gordon, LLP

A handwritten signature in black ink, appearing to read 'Michelle C. Marans', is written over a horizontal line.

By: Michelle C. Marans, Esq.
Attorneys for Creditor
53 Gibson Street
Bay Shore, New York 11706
(631) 969 3100
Our File No.: 01-091124-B00